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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,240	12/01/2003	Phil R. Stillwell	080705-1010	1936
24504	7590	01/24/2006	EXAMINER	
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 100 GALLERIA PARKWAY, NW STE 1750 ATLANTA, GA 30339-5948			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,240

Applicant(s)

STILLWELL, PHIL R.

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/22/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 5 define a headwear article having three states: expanded, collapsed, and storage. It is unclear as to whether the claims are directed to three separate articles capable of a storage state/arrangement, or whether the claims are directed to the three articles in a specific state/arrangement. To prosecute the examination of the claims on their merits, the examiner interprets the claims to be directed to the storage state and that the headwear need only be capable of the collapsed and expanded states.

Claims 2-4, 6, and 7 are dependent on claims 1 and 5 and are rejected for the above reasons.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-3, 5, 6, 8-10, 12, and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by the MV Sport Cap Tee.

The MV Sport Cap Tee has an internet archive date of 7 February 2003 and is available under 35 U.S.C. 102(a).

Claims 1 and 5: The MV Sport Cap Tee discloses a tee-shirt rolled into a cylinder with a collapsed baseball-type cap wrapped around the cylinder and secured with a strap around the cap bill and tee-shirt. Neither claim 1 nor claim 5 defines what constitutes a width. The width can therefore be interpreted to mean either the dimension of the cap measured from the portions that would normally overlie the ears of the wearer, or the dimension from the tip of the cap bill to the portion that would normally lie at the back of the wearer's head. Accordingly, the MV Sport Cap Tee discloses a headwear article in a storage state, clothing in a cylinder shape, and a holding element disposed around the headwear and clothing as claimed in either claim 1 or claim 5.

Claims 8 and 12: The MV Sport Cap Tee, as applied to claims 1 and 5 above, discloses the claimed structures in the claimed package arrangement and therefore discloses the claimed packaging methods by presentation.

Claims 2 and 9: The MV Sport Cap Tee discloses a strap (item wrapped around bill of the headwear.

Claims 3, 6, 10, and 13: The MV Sport Cap Tee discloses the headwear deformed into an arc shape.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4, 7, 11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over The MV Sport Cap Tee in view of Kronenbeger (US 6,507,956).

The MV Sport Cap Tee discloses the claimed invention except for the headwear deformed into a cylinder. Kronenbeger (see Figure 6) teaches storage of headwear into a cylinder. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of The MV Sport Cap Tee with the headwear deformed into a cylinder in order to reduce the diameter of the package. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Greg Pickett
Examiner
17 January 2006


Mickey Yu
Supervisory Patent Examiner
Group 3700